

FILED

MAY 13 2013

Board of Vocational Nursing
and Psychiatric Technicians

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8 **BEFORE THE**
9 **BOARD OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

11 In the Matter of the Accusation Against:

Case No. PT-2008-1136

12 **DIEGO ANDREW RIVERA**
13 **1606 N. Clark**
Fresno, CA 93703

A C C U S A T I O N

14 **Psychiatric Technician License No. PT**
15 **33550**

16 Respondent.

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18 Teresa Bello-Jones, J.D., M.S.N., R.N. ("Complainant") alleges:

19 **PARTIES**

20 1. Complainant brings this Accusation solely in her official capacity as the Executive
21 Officer of the Board of Vocational Nursing and Psychiatric Technicians ("Board"), Department of
22 Consumer Affairs.

23 2. On or about January 16, 2007, the Board issued Psychiatric Technician License
24 Number PT 33550 to Diego Andrew Rivera ("Respondent"). The license was in full force and
25 effect at all times relevant to the charges brought herein. The license expired on May 31, 2012,
26 and has not been renewed.

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STATUTORY PROVISIONS

3. Business and Professions Code ("Code") section 4520 states:

Every licensed psychiatric technician under this chapter may be disciplined as provided in this article. The disciplinary proceedings shall be conducted by the board in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

4. Code section 4545 states, in pertinent part, that the Board may renew an expired license at any time within four years after the expiration.

5. Code section 4521 states, in pertinent part:

The board may suspend or revoke a license issued under this chapter for any of the following reasons:

(a) Unprofessional conduct, which includes, but is not limited to, any of the following:

(5) Use any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code, or any dangerous drug as defined in Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or injurious to himself or herself, any other person, or the public or to the extent that the use impairs his or her ability to conduct with safety to the public the practice authorized by his or her license.

(f) Conviction of any offense substantially related to the qualifications, functions, and duties of a psychiatric technician, in which event the record of the conviction shall be conclusive evidence of the conviction. The board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline.

6. Code section 118(b) provides:

The suspension, expiration, or forfeiture by operation of law of a license issued by a board in the department, or its suspension, forfeiture, or cancellation by order of the board or by order of a court of law, or its surrender without the written consent of the board, shall not, during any period in which it may be renewed, restored, reissued, or reinstated, deprive the board of its authority to institute or continue a disciplinary proceeding against the licensee upon any ground provided by law or to enter an order suspending or revoking the license or otherwise taking disciplinary action against the licensee on any such ground.

COST RECOVERY

7. Code section 125.3 provides, in pertinent part, that the Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Conviction of Crimes)**

3 8. Respondent is subject to discipline under Code section 4521(f), in that he was
4 convicted of the following crimes that are substantially related to the qualifications, functions or
5 duties of a psychiatric technician:

6 a. On or about January 28, 2009, in the case of *People v. Diego Andrew Rivera*, (Super.
7 Ct. San Luis Obispo County, 2008, Case No. M000426675), Respondent was convicted by the
8 Court on his plea of nolo contendere of violating Vehicle Code section 14601.1(a) (driving with a
9 suspended license), a misdemeanor.

10 b. On or about November 19, 2009, in the case of *People v. Diego Andrew Rivera*,
11 (Super. Ct. San Luis Obispo County, 2009, Case No. M000424608), Respondent was convicted
12 by the Court on his plea of no contest of violating Vehicle Code sections 23103(a) and 23103.5
13 (reckless driving involving alcohol), a misdemeanor. The circumstances of the crime were that
14 on or about October 15, 2008, Respondent drove a vehicle while under the influence of alcohol
15 (.08%).

16 c. On or about October 28, 2008, in the case of *People v. Diego Andrew Rivera*, (Super.
17 Ct. San Luis Obispo County, 2008, Case No. M000423315), Respondent was convicted by the
18 Court on his plea of no contest of violating Vehicle Code section 20002(a) (hit and run), a
19 misdemeanor. The circumstances of the crime were that on or about September 7, 2008,
20 Respondent willfully and unlawfully failed, refused, and neglected to locate and notify the owners
21 and persons in charge of such vehicles (five) involved, and did willfully and unlawfully failed,
22 refused, and neglected to leave in a conspicuous place on the vehicles and other property
23 damaged, a written notice giving the name and address of the driver and of the owner of the
24 vehicles involved and a statement of the circumstances thereof and without unnecessary delay,
25 notify the Atascadero Police Department of the place where the collision occurred.

26 d. On or about April 15, 2008, in the case of *People v. Diego Andrew Rivera*, (Super. Ct.
27 San Luis Obispo County, 2008, Case No. M000415450), Respondent was convicted by the Court
28 on his plea of no contest of violating Penal Code section 243(e)(1) (battery), a misdemeanor. The

1 circumstances of the crime were that on or about February 28, 2008, Respondent willfully and
2 unlawfully used force and violence upon the person of J.G., a person with whom he had or
3 previously had a dating or engagement relationship.

4 **SECOND CAUSE FOR DISCIPLINE**

5 **(Use of Alcohol in a Dangerous or Injurious Manner)**

6 9. Respondent is subject to discipline under Code section 4521(a), on the grounds of
7 unprofessional conduct as defined in Code section 4521(5), in that on or about October 15, 2008,
8 Respondent used an alcoholic beverage to an extent or in a manner dangerous or injurious to
9 himself, and the public, when he operated a vehicle while under the influence of alcohol, as more
10 particularly set forth above in paragraph 8, subdivision (b).

11 **FACTORS IN AGGRAVATION**

12 10. On or about December 19, 2005, in the case of *People v. Diego Andrew Rivera*,
13 (Super. Ct. Fresno County, 2005, Case No. T05000712-0), Respondent was convicted by the
14 Court on his plea of no contest of violating Vehicle Code section 23152(b) (driving a vehicle
15 while having 0.08 percent and more of alcohol in his blood), a misdemeanor. The circumstances
16 of the crime were that on or about August 20, 2005, Respondent drove a vehicle with a blood
17 alcohol level of .23% and was involved in a collision.

18 11. On or about July 12, 2004, in the case of *People v. Diego Andrew Rivera*, (Super.
19 Ct. Fresno County, 2004, Case No. F04903324-2), Respondent was convicted by the Court on his
20 plea of no contest of violating Penal Code section 243(e)(1) (battery), a misdemeanor. The
21 circumstances of the crime were that on or about April 14, 2004, Respondent willfully and
22 unlawfully used force and violence upon the person of Jane Doe, a person who was the spouse or
23 former spouse, a person cohabitating with him, the parent of his child, or a person with whom he
24 currently had or previously had a dating or engagement relationship.

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1 PRAYER

2 WHEREFORE, Complainant requests that a hearing be held on the matters herein
3 alleged, and that following the hearing, the Board of Vocational Nursing and Psychiatric
4 Technicians issue a decision:

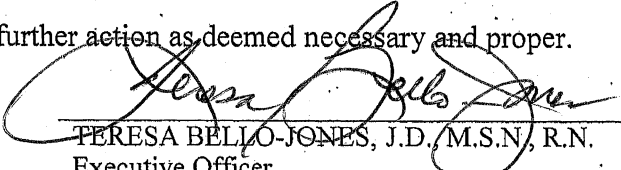
5 1. Revoking or suspending Psychiatric Technician License Number PT 33550, issued
6 to Diego Andrew Rivera;

7 2. Ordering Diego Andrew Rivera to pay the Board of Vocational Nursing and
8 Psychiatric Technicians the reasonable costs of the investigation and enforcement of this case,
9 pursuant to Business and Professions Code section 125.3; and,

10 3. Taking such other and further action as deemed necessary and proper.

11 DATED: _____

MAY 13 2013


TERESA BELLO-JONES, J.D., M.S.N., R.N.
Executive Officer
Board of Vocational Nursing and Psychiatric Technicians
Department of Consumer Affairs
State of California
Complainant

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